

**STATEMENT
OF
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HEARING ON TRADE NEGOTIATIONS
BEFORE THE SENATE FINANCE COMMITTEE

FEBRUARY 6, 2002**

Introduction

Mr. Chairman, Members of the Committee, thank you for inviting me to appear today to discuss the new round of World Trade Organization (WTO) negotiations launched at Doha last year. My name is George Scalise and I am the president of the Semiconductor Industry Association (SIA). I'd like to give you some background on the SIA and its members, which will help explain why the new WTO Round is so important to America's semiconductor industry.

Background

The SIA represents over 90 percent of America's semiconductor industry. Today, the U.S. industry is the most competitive in the world, with more than 50 percent of world market share. More than 50 percent of our members' revenues is derived from overseas sales, and foreign markets are expected to continue growing in importance. Where American chipmakers are able to compete fairly – in markets unencumbered by trade barriers – we are successful. As a result, eliminating barriers to trade and further opening world markets is vital to our industry.

SIA has a long history of active support for trade liberalizing initiatives such as the Uruguay Round, the Information Technology Agreement (ITA) and China's accession to the WTO. Since the beginning of the 107th Congress, SIA has worked to gain support and passage of TPA (HR 3005) by the Congress. We commend your leadership which allowed for the swift passage of TPA by this Committee. We look forward to working with you and the Members of the Committee to pass TPA in the coming weeks. SIA will continue to press for and support further market opening initiatives, including the new round of WTO negotiations. For the new round, it is imperative to continue to make progress toward a further opening of markets under a

rules-based system – it is equally vital that we not lose ground in areas like the trade laws where. These combined objectives will best serve the macroeconomic purpose of stimulating confidence and growth in international trade.

The New Round

I believe that the new WTO round can be relied upon to liberalize trade, resulting in significant benefits for the semiconductor industry. Some of the benefits – such as tariff elimination -- will be direct. Other benefits in areas such as services liberalization will be indirect. As you well know, the United States is fortunate to have an extremely strong and talented trade negotiating team, and we look forward to working with that team and supporting them in their efforts to secure market opening benefits. Unfortunately, in addition to working on opening markets, our trade negotiators will also be faced with an extremely difficult challenge – maintaining strong U.S. trade laws in the face of extreme pressure from our trading partners to weaken those laws. They will also have to deal with proposals on competition policy that could lead to excessive foreign government intervention abroad that could damage America's most competitive companies.

Maintenance of U.S. Trade Laws

As you know, the antidumping remedy is especially important with respect to the semiconductor industry given the history of injurious dumping in our sector. In the mid-1980's, Japanese dumping of DRAMs drove nine of eleven U.S. semiconductor producers out of this segment of the market; one company was driven out of business altogether. U.S. chipmakers are the most competitive in the world -- and consistently are very successful in competition with foreign producers who trade fairly. Fortunately most do, but there are occasions when some engage in dumping, which the current international trading rules condemn, and the results can be devastating. The WTO's antidumping rules foster competition, creating an environment in which success is determined by which companies have the best products, technology, and manufacturing capabilities, and not those who sell below cost of production or price discriminate to gain export market share.

Without the remedies provided by the antidumping law, our industry would not be the world leader it is today. One example of this is an outgrowth of the EPROM dumping case in the mid-1980's. The U.S. successfully defended against Japanese dumping of EPROMs, and U.S. companies remained viable competitors in this market as a result. The current large and fast growing market for “flash” semiconductors evolved from EPROMs and U.S. companies are the most successful in this market. This situation would likely be very different today if the EPROM dumping had not been stopped. The same can be said of DRAMs, where today the U.S. is home to only one manufacturer but it is one of the most – if not the most – competitive DRAM company in the world. Without the antidumping laws, this very successful and competitive company could have been driven out of the business.

Manufacturing DRAMs and other advanced semiconductors requires billions of dollars of investments in plant, equipment and research and development – it is vital that the companies that make these investments be able to compete on a fair basis in order to recoup

their enormous investments. The antidumping laws as they are structured today help insure that fair competition is possible. No one can take an objective look at the world's semiconductor market today and not conclude that there is vibrant competition resulting in long term, consistent increases in benefits for consumers. This is a direct result of preserving competitors from the destruction caused by dumping.

The antidumping rules in their current form were the result of heated and arduous negotiations between the United States and other WTO members during the Uruguay Round. They represent a hard fought compromise – one that has worked to allow those companies that operate in a fair and open market economy to compete on an equal footing with their foreign competitors. Regrettably, the United States was the only WTO member that opposed the reopening of the antidumping rules. The Doha Ministerial Declaration that was ultimately issued states that WTO members "agree to negotiations aimed at clarifying and improving" the WTO agreement on antidumping, but that any negotiations will preserve this agreement's "basic concepts, principles, and effectiveness" and its "instruments and objectives." We must make sure that these principles, instruments, and objectives are preserved in all respects.

New negotiations on antidumping will, I fear, be extremely difficult. All the current proposals for revisions to the antidumping agreement call for significantly weakening the ability of industries in the United States and abroad to use domestic antidumping laws to offset unfair trade practices. A WTO Ministerial Conference memorandum listing issues to be addressed in the negotiations identifies 13 specific issues to be negotiated related to antidumping rules – these proposals are focused on limiting the discretion of national antidumping authorities to determine dumping margins. Such a move threatens to undermine the consensus in favor of market liberalization and it will undermine support for the WTO if countries can engage in dumping that cannot be effectively offset.

Maintaining strong trade laws – which helps insure that America's chipmakers can compete on the basis of their technological capabilities and product offerings -- is vital to the health of the U.S. semiconductor industry. Our negotiators will have a tremendous challenge before them during the new WTO round – SIA is ready to support them in any way possible during these negotiations.

Sixty-three members of the Senate went on record just before the Doha Ministerial to state to the President that the trade remedy laws must not be weakened. SIA strongly supports the enactment of Trade Promotion Authority. It passed the House by the slimmest possible margin, 215-214. If the WTO rules governing antidumping narrow the ability of the United States to maintain its antidumping remedy, it is highly unlikely that Congress would approve the results of this Round of negotiations. That would be tragic. But it is avoidable if the U.S. negotiators are firm.

Tariff Reduction and Elimination

The Ministerial Declaration issued at the end of the conference launches a new round of negotiations to reduce or eliminate tariffs on non-agricultural goods, especially on products of export interest to developing countries. While this is potentially very promising, the document

notes that the negotiations should allow "less than full reciprocity" for developing countries to reduce tariffs. This precept is inconsistent with so-called "zero-for-zero" negotiations to eliminate tariffs in certain sectors, including information technology. The Information Technology Agreement (ITA) -- which eliminates tariffs on information technology products -- was not specifically mentioned in the Declaration. SIA believes that all WTO members should join the ITA as soon as possible, especially Latin American countries, and we would like to see this goal pursued within the new round. We firmly believe that this is in the best interests of economic development. Undoubtedly, it was a similar exercise of enlightened self-interest that led China to join the ITA as part of its WTO accession process.

Competition Policy

Competition policy is the subject of an ongoing dialogue within the WTO, and negotiations may be launched after the next WTO Ministerial meeting in 2003. Current discussions in the WTO's Trade and Competition Policy working group, meanwhile, are to continue clarifying "core principles" of competition policy, including transparency, non-discrimination, procedural fairness, and cartels, as well as internal WTO procedural issues, such as providing developing countries with technical assistance to be able to participate meaningfully in the discussions. The discussions are to take account of the needs of developing countries, where ideally competition policy will be used to create properly functioning home markets.

While this area of discussion has the potential to yield benefits, it is also an area that poses enormous risks and must be approached with extreme caution.. Competition policy could be used to make successful foreign firms vulnerable to attacks on the basis of alleged "abuse of dominant position." It would be very damaging to international trade if new WTO competition policy rules provided WTO sanction for abuses of competition policy measures to protect and promote domestic industries. Most of the competition policy discussion so far has been grounded in theory rather than in a factual examination of the specific barriers to international trade and investments that need to be remedied. Before attempting new international disciplines, it is necessary to understand the dimensions of the problems posed for trade by the absence of competition rules and/or their enforcement in so many markets around the world.

A decision on whether or not to launch negotiations on competition policy after the next ministerial in 2003, along with negotiations on trade and investment, government procurement, and trade facilitation (the so-called "Singapore issues"), has not yet been finalized. According to the Declaration, these negotiations are to start after the Fifth Ministerial, when a decision on negotiating procedures is to take place -- a decision to launch these talks will require a consensus on the procedures.

The chief reason that there no formal international trade organization was formed after the Second World War was the attempt to include provisions that addressed so-called "restrictive business practices". Competition policy negotiations pose a very high risk for the future of an open international trading system. Competition policy can easily become an unregulated substitute for antidumping, where the rules and practices are well defined, and

could even undermine the protection of intellectual property, a hard-won gain from the last major round of international trade negotiations.

E-Commerce

Electronic commerce and internet applications have been key demand drivers in the semiconductor industry over the past few years, and it is very important that the rules governing trade in this area remain as open as possible. The WTO Ministerial Declaration recognizes the new challenges and opportunities for trade brought about by e-commerce, and notes the importance of creating and maintaining an environment which is favorable to the future development of electronic commerce.

U.S. negotiators in Doha sought and won a commitment to maintain the moratorium on customs duties through the next ministerial in 2003. SIA stands ready to support our negotiating team in securing a permanent tariff moratorium, and we encourage them to continue pursuing rules that breed competition and growth in this important area. We believe international agreement should be reached to ensure that electronically delivered goods should receive no less favorable treatment than similar products delivered in physical form and that their classification should ensure the most liberal treatment possible. Governments should refrain from enacting trade-related measures that impede e-commerce. Where regulations are necessary, governments should insure that they are transparent, non-discriminatory and employ the least trade-restrictive means available. Further, because of the great growth potential from e-commerce-based services, the U.S. should seek improved market access and national treatment commitments for a broad range of services, such as telecom and financial services, which can be delivered electronically.

Trade-Related Investment Measures (TRIMS) Agreement

U.S. chipmakers often face complex rules and requirements when making investments overseas – they may be required to enter joint ventures or transfer technology in exchange for permission to invest and gain market access. The freedom to engage in direct investment is critical to market access for the chip industry, and to the development goals of developing countries. Unfortunately, existing WTO investment rules do not adequately discipline many of the restrictions placed on investment in various countries.

Improving and expanding WTO rules on TRIMS should be a part of the new round of WTO negotiations. In particular, rules should be adopted to prohibit requirements that foreign firms enter joint ventures, or transfer technology or intellectual property, in exchange for market access. These strengthened provisions should encompass not only measures that are mandatory or enforceable under domestic law or under administrative rulings, but instances where compliance is necessary to obtain any approval or advantage.

Trade and investment is supposed to be the subject of negotiations to start following the next ministerial conference to be held in 2003 – launching these talks, though, will require a consensus that may be challenging to achieve. But it is in the interest not only of the United

States, but also of developing countries, to have international rules that protect investors' rights, as such rules will encourage high tech investment in developing countries.

Trade-Related Aspects of Intellectual Property (TRIPS) Agreement

As an R&D intensive industry, we are very concerned about the full and effective protection of intellectual property rights. The TRIPS Agreement negotiated as part of the Uruguay Round represented a major advance in the protection of intellectual property (IP). The agreement began the process of improving worldwide IP protection and allowed for staged implementation over the course of a decade. Some developing countries have been trying to delay implementation of their obligations. Failure of such countries to fulfill their commitments from the Uruguay Round makes it less likely that the expected commercial gains for the WTO members that have met their commitments will be realized. In addition, failure to adopt promised IP protections is likely to actually undermine the development objectives of the countries seeking to weaken the WTO's intellectual property protections. We support the full implementation of TRIPS as soon as possible by all countries, including developing countries.

Some WTO members also question whether TRIPS implementation requires "transfer of technology on fair and mutually advantageous terms." Any effort to mandate the transfer of technology must be resisted, as such mandates not only weaken IP protection, but will also discourage foreign-direct investment and the commercially-driven transfer of technology that is essential to economic development in many parts of the world.

Dispute Settlement

I am afraid that the WTO Dispute Settlement process represents a growing problem for the international trading system. Unfortunately, it appears to be ineffective against informal barriers to trade of the kind that the semiconductor industry faced with its major competitor in the 1980s and it is curtailing the use of America's trade remedies. The dispute settlement system is legislating new obligations for WTO members that were not agreed at the bargaining table. A more responsible dispute settlement process is badly needed. If it is not achieved, the ability to obtain further market opening could be undermined and the availability of justifiable trade remedies will be further impaired.

The Declaration launches negotiations aimed at "improvements and clarifications" of the Dispute Settlement Understanding based on work done so far and that will continue, with the goal of agreeing on measures by May 2003. The Declaration and the memorandum do not specifically add to the work program currently underway, but allow consideration of "additional proposals." There have been significant problems with Dispute Settlement in the antidumping and countervailing duty law areas, particularly with respect to standard of review, and these problems should be addressed. We are hopeful that these talks will in fact yield the desired improvements to the dispute settlement process.

Taxation

The current WTO rules on adjusting for indirect taxes – which yielded the recent decision against the U.S. Foreign Sales Corporation (FSC) have no basis in economics. Direct (income) taxes and indirect (sales, VAT) taxes do not have a different incidence on goods, and yet they are treated differently by the WTO. The former may not be rebated on export and charged on imports, while the latter may be -- this disparity in treatment creates an un-level playing field. Any new round should formally remove the discrimination against the rebate of direct taxes, as this is a significant detriment to the United States and may subject U.S. exports to WTO-sanctioned trade retaliation.

Conclusion

SIA has long supported fair and open trade – where our companies can compete on the basis of market principles, unencumbered by trade barriers, they are tremendously successful. We strongly support a positive new round of trade negotiations, and believe it has the potential to further open markets and improve the global trading system. While we support further opening markets, we urge extreme caution in areas such as antidumping and competition policy – improvements in the current international trading system must not be purchased at the expense of the existing rules and current level of liberalization. This is particularly important as we begin to integrate China into the WTO -- the U.S. secured a very strong bilateral agreement regarding the terms for China's accession to the WTO, and these tremendous gains must not be undercut in the process of negotiating a new WTO round. SIA stands ready to fully support the negotiating team from the United States Trade Representative's Office and the Department of Commerce –and we believe they can ultimately bring home an agreement that benefits U.S. industry.

With the right results, I am confident that Congress will approve new agreements reached with the strong majorities that once characterized passage of packages of trade agreements. Your support and ours must not be taken for granted, but it should be expected if the advice that you and the private sector give is really listened to. It is our faith in the active involvement of the Congress and the private sector in the trade agreements process, and the strong positive results achieved in the past that give SIA the basis for its strong support of Trade Promotion Authority. America's high technology manufacturers -- including semiconductor makers -- have benefited greatly from the agreements concluded in the past utilizing fast track negotiating authority.